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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FERA APPEAL NO.78 OF 2007

Smt. Kamla Soni ..Appellant.

V/s.

The Special Director, Directorate of Enforcement & Ors. ..Respondents.

Mr.P.S.Jetly with Anand Sachwani & R.R.Shah for appellant.

Mr.A.S.Rao with Y.S.Bhate and H.P.Chaturvedi for respondents.

CORAM : F.I.REBELLO AND J.P.DEVADHAR, JJ.

DATED : 26TH OCTOBER, 2007.

P.C. :-

The appellant is a widow of one Parasmal R. Soni, who expired on 29/6/2003. In a proceeding under FEMA Act an order of adjudication was passed on 18/9/2003 i.e. subsequent to the death of the party to this proceedings.

2. It is the case of the appellant that she came to know of the order in January, 2004 and immediately thereafter, she took steps, preferred an appeal and also applied for condonation of delay. The Tribunal initially by an order waived the request of

pre-deposit. However, it refused to condone the delay for reasons set out therein. This order is the subject matter of the present appeal.

3. Admittedly, in the instant case, the order of the adjudicating authority is against a dead person. Once that be the case and as the widow who appeared and shown sufficient cause that ought to have been considered by the Tribunal. The Tribunal has proceeded to consider various authorities for arriving at a conclusion that the cause shown would not amount to a sufficient cause.

4. The law on the point of sufficient cause is now well settled by the Apex Court in a large number of Judgments. The learned counsel has drawn our attention to the Judgment of the Apex Court in the case of **Collector, Land Acquisition Anantnag & Anr. V/s. Mst.Katiji & Ors.** reported in **1987 (28) e.l.t. 185 (S.C.)**. The test now is whether the party is diligently contesting the proceedings and thereafter has shown desire to proceed with the proceedings. In the instant case, the cause shown was that the appellant was not aware of the earlier proceedings and only on becoming aware the appeal was filed. In these circumstances, in our opinion, the Tribunal ought to have given opportunity to the appellant-widow of the

deceased party against whom the proceeding was pending to contest the proceedings.

5. Considering the above, in our opinion, the impugned order is set aside. Delay condoned. Instead of remanding the matter back to the Appellate Tribunal to consider the appeal on merits, considering that the adjudication order was passed against a dead person, the order is set aside and the matter is sent to the adjudicating authority to dispose of the matter according to law, after giving notice to the appellant herein.

6. Appeal is disposed of accordingly.

(F.I.REBELLO, J.)

(J.P.DEVADHAR, J.)